

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MAY 17, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 923

Introduced by Assembly Member Steinorth

February 26, 2015

An act to amend Sections 3750 and 3755 of, and to add Section 3754.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as amended, Steinorth. Respiratory care practitioners.

(1) Under the Respiratory Care Practice Act, the Respiratory Care Board of California licenses and regulates the practice of respiratory care and therapy. The act authorizes the board to order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under the act, for any of specified causes. A violation of the act is a crime.

This bill would include among those causes for discipline the employment of an unlicensed person who presents herself or himself as a licensed respiratory care practitioner when the employer should have known the person was not licensed. ~~The bill would also include among those causes for discipline the commission by specified licensees of an act of neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult, as described, without regard to whether the person is a patient. The bill~~

would also include among those causes for discipline the provision of false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action when the individual knew or should have known the statements or information was false.

The bill would provide that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice respiratory care, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, does not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee, or to render a decision to suspend or revoke the license.

(2) Under the act the board may take action against a respiratory care practitioner who is charged with unprofessional conduct which includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision for which the board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license. The act provides that engaging in repeated acts of unprofessional conduct is a crime.

This bill would expand the definition of unprofessional conduct to include any act of abuse towards a patient and any act of administering unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3750 of the Business and Professions
- 2 Code is amended to read:

1 3750. The board may order the denial, suspension, or revocation
2 of, or the imposition of probationary conditions upon, a license
3 issued under this chapter, for any of the following causes:

4 (a) Advertising in violation of Section 651 or Section 17500.

5 (b) Fraud in the procurement of any license under this chapter.

6 (c) Employing an unlicensed person who presents herself or
7 himself as a licensed respiratory care practitioner when the
8 employer knew or should have known the person was not licensed.

9 (d) Conviction of a crime that substantially relates to the
10 qualifications, functions, or duties of a respiratory care practitioner.
11 The record of conviction or a certified copy thereof shall be
12 conclusive evidence of the conviction.

13 (e) Impersonating or acting as a proxy for an applicant in any
14 examination given under this chapter.

15 (f) Negligence in his or her practice as a respiratory care
16 practitioner.

17 (g) Conviction of a violation of this chapter or of Division 2
18 (commencing with Section 500), or violating, or attempting to
19 violate, directly or indirectly, or assisting in or abetting the
20 violation of, or conspiring to violate this chapter or Division 2
21 (commencing with Section 500).

22 (h) The aiding or abetting of any person to violate this chapter
23 or any regulations duly adopted under this chapter.

24 (i) The aiding or abetting of any person to engage in the unlawful
25 practice of respiratory care.

26 (j) The commission of any fraudulent, dishonest, or corrupt act
27 that is substantially related to the qualifications, functions, or duties
28 of a respiratory care practitioner.

29 (k) Falsifying, or making grossly incorrect, grossly inconsistent,
30 or unintelligible entries in any patient, hospital, or other record.

31 (l) Changing the prescription of a physician and surgeon, or
32 falsifying verbal or written orders for treatment or a diagnostic
33 regime received, whether or not that action resulted in actual patient
34 harm.

35 (m) Denial, suspension, or revocation of any license to practice
36 by another agency, state, or territory of the United States for any
37 act or omission that would constitute grounds for the denial,
38 suspension, or revocation of a license in this state.

39 (n) (1) Except for good cause, the knowing failure to protect
40 patients by failing to follow infection control guidelines of the

board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health *Care* Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(2) The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of bloodborne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care or negligence in his or her practice as a respiratory care practitioner, or in any capacity as a health care worker, consultant, supervisor, manager or health facility owner, or as a party responsible for the care of another.

~~(q) If the licensee is a mandated reporter or is required to report under Article 2 (commencing with Section 11160) or Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code. The commission of an act of neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult as described in Section 368 of the Penal Code, without regard to whether the person is a patient.~~

~~(r)~~

(q) Providing false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action when the individual knew or should have known the statements or information was false.

1 SEC. 2. Section 3754.8 is added to the Business and Professions
2 Code, to read:

3 3754.8. The expiration, cancellation, forfeiture, or suspension
4 of a license, practice privilege, or other authority to practice
5 respiratory care by operation of law or by order or decision of the
6 board or a court of law, the placement of a license on a retired
7 status, or the voluntary surrender of the license by a licensee shall
8 not deprive the board of jurisdiction to commence or proceed with
9 any investigation of, or action or disciplinary proceeding against,
10 the licensee, or to render a decision to suspend or revoke the
11 license.

12 SEC. 3. Section 3755 of the Business and Professions Code is
13 amended to read:

14 3755. (a) The board may take action against a respiratory care
15 practitioner who is charged with unprofessional conduct in
16 administering, or attempting to administer, direct or indirect
17 respiratory care in any care setting. Unprofessional conduct
18 includes, but is not limited to, the following:

19 (1) Repeated acts of clearly administering directly or indirectly
20 inappropriate respiratory care procedures, protocols, therapeutic
21 regimens, or diagnostic testing or monitoring techniques.

22 (2) Any act of administering unsafe respiratory care procedures,
23 protocols, therapeutic regimens, or diagnostic testing or monitoring
24 techniques.

25 (3) Any act of abuse towards a patient.

26 (4) A violation of any provision of Section 3750.

27 (b) The board may determine unprofessional conduct involving
28 any and all aspects of respiratory care performed by anyone
29 licensed as a respiratory care practitioner.

30 (c) Any person who engages in repeated acts of unprofessional
31 conduct shall be guilty of a misdemeanor and shall be punished
32 by a fine of not more than one thousand dollars (\$1,000), or by
33 imprisonment for a term not to exceed six months, or by both that
34 fine and imprisonment.

35 SEC. 4. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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